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CENTRAL INTELLIGENCE AGENCY

OGC Has Reviewed

The Operations Center

DD/A Registry
File DDM-1


16 June 1978

Deputy Director for Administration

Jack:

The attached is a new Operations Center publication which combines the old Director's Cable Summary, the Morning News Highlights and the Imagery Watch Report. This publication is limited to the DCI and his senior executives and makes no pretension but to attempt to keep you, our most important customers informed of the major events or reports which we have observed during the previous approximately 12 to 24 hours.

STATINTL


Vincent J. Heyman
Director

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MEMORANDUM FOR: ~~Director, CIA Operations Center~~

SUBJECT : The Executive Summary

1. With reference to the Director's comments on the Executive Summary, the Director stated that he believed there was a security problem in incorporating the morning press summary in the same publication with classified material. He also commented that he thought you might wish to disseminate the Press Summary more broadly and would not be able to do so if it were included with the other material. He added, incidentally, that the Press Summary was either the "best" or the "most useful" thing he received in the morning. The Acting DDCI this morning reminded me of the Director's desire that the two be separate. I think this speaks for itself.

2. The DCI also asked that the press items attached to the Press Summary be attached in the order they appear in the Press Summary. I understand from your comment this morning that you are now doing this. It might be useful if you could tab those items on his copy for easy reference if you are not already doing so.

3. As to his wishes with regard to the classified material, doing what he asks is obviously a complicated and difficult task. It will take time and care. After I have had further discussion with the DDO, I intend to organize a small working group including the Operations Center, CRG, DDO, and probably some of the production offices to consider how to approach this.

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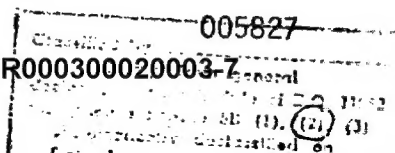
Associate Director - Substantive Support
National Foreign Assessment Center

- 1 - Addressee
1 - AD/NFAC/SSChrono

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YES CLARITY
EYES ONLY

SECRET



NFIB AGENDA

S. 2525 Issues

ADDITIONS

Sections 111(c) and (d) providing that nothing in the bill shall prohibit or affect non-intelligence activities of any department or agency or existing responsibilities under law. 1

DEFINITIONS AND SCOPE OF THE LEGISLATION

LESS SPECIFIC
Entities of the "Intelligence Community"--Whether identification of elements of the intelligence community should be more or less specific, or should be made identical with, the E.O. 12036 definition? 2

"Intelligence Activity"--Whether the legislation may be modified so as to include activities properly subject to the authorities and limitations of the bill and at the same time to exclude activities not properly so subject, whether or not performed by entities within the "intelligence community?" 3

BROADER?
"Intelligence Sources and Methods"--CIA desires much broader definitions of intelligence sources and intelligence methods not limited to present sources or methods and not subject to a "risk of harm" factor, so as to retain intact the existing protection for such information. 4

STATUS, ROLE AND AUTHORITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

DNI TO BE D/CIA
DNI as Head of CIA--Authority of the President to transfer from the DNI to the Deputy DNI or one of five assistant DNIs the DNI's authority as head of the Central Intelligence Agency. 5

YES
DNI Level and Support Staff--Whether the DNI should be raised to cabinet level and his deputies and assistants raised accordingly with the assistants becoming Presidential appointees requiring Senate confirmation?

1 TEN YEAR TERM
Conditions on Length of DNI and DDNI Service--Whether the DNI and DDNI should face reappointment and reconfirmation for a second term of office or whether the terms should be ten years without reappointment but at the pleasure of the President? 1

Authorities of the DNI--This issue comprehends six subordinate issues.

YES a. Whether section 114(b) grants the DNI greater authority than the Executive Order by permitting him to develop plans, objectives, and requirements to meet needs and priorities established by the NSC? 8

b. Whether the DNI's authority in section 114(g)(2) to establish procedures to increase the usefulness of national intelligence information will allow him to exert control of collection activities? 9

CONSULT ONLY c. Whether the DNI should be required to coordinate all foreign liaison service arrangements with the Secretary of State, as well as consulting the Secretary in formulating policy regarding such arrangements--section 114(j)? 10

DCID 1/14 d. Whether the DNI should have authority to terminate the security clearance of contractors not only of his own office but of any other entity of the community--section 114(n)? 11

e. Whether section 114(q), in authorizing the DNI to review intelligence and intelligence-related activities, of the Government, would empower him to inquire into matters not properly within his area of concern? 12

f. Whether the implementing authorities of section 121 regarding the budgetary authority of the DCI are necessary and whether the provision of section 121(b) requiring that department budget decisions not be allowed to offset national budget determinations are appropriate? 13

OVERSIGHT AND ACCOUNTABILITY

EXECUTIVE BRANCH

NO Should the IOB become a statutory entity? 14

YES If the IOB becomes a statutory entity, should the members of the Board be subject to Senate confirmation? 15

GENERAL If the IOB becomes a statutory entity, should the legislation include a detailed charter? 16

What Details are Appropriate in a Statutory Charter--Three issues are presented.

99 a. IOB Reporting to the Attorney General and the DNI--Whether the IOB should be required to furnish copies of its reports to the President, to the Attorney General and the DNI?

PROPRIETARY OUT
b. Questions of "Propriety" and Other Aspects of the Reporting Standards--Whether requirements to report questions of propriety should be eliminated altogether and whether the reporting threshold as to questions of legality to be reported should be raised?

NOT NECESSARY
c. Instructions Not to Report to the IOB--Whether the requirement of E.O. 12036 that Inspectors General and General Counsels report to the IOB any occasion on which they are directed by the heads of the entities not to report a matter to the IOB should be elaborated or eliminated altogether?

YES. Whether the whistle blowing and whistleblower provisions should be modified? 702

LEGISLATIVE BRANCH

DELETE SPECIFIC REPORTING ILLEGIB
Whether the proposed language of section 152(a) which sets forth a broad obligation on the part of heads of intelligence entities to keep the HPSCI and SSCI fully and currently informed is acceptable in lieu of the present Executive Order language, provided that all other requirements in the legislation to report to these committees are deleted?

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RECOMMENDATION COMMITTEE GIVING THEM EXCLUSIVE RIGHT TO BRING IN GAO.
Whether the provisions of Title I authorizing financial and program management audits by the Comptroller General should be modified so as to make the SSCI and HPSCI the exclusive focal point for all congressional audit requests and all audit activities of the GAO. 17

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IV. DEFINITIONS AND SCOPE OF THE LEGISLATION

The most basic determinations required to be made regarding the acceptability of S.2525, determinations on which the extent and nature of many other concerns raised by the bill may turn, pertain to the appropriate entities and activities which ought to be authorized by, and subject to the restrictions of, the bill.

In order to alleviate the concerns expressed by entities with both intelligence and non-intelligence functions, a new Section 111(c) has been added by the working group to the effect that nothing in the bill shall be construed to prohibit or affect the non-intelligence activities of any department or agency.

Further, in an effort to clarify the impact of this legislation upon existing law which is neither expressly referenced nor amended, a new Section 111(d) has been similarly added to provide that nothing in the bill is intended to affect or alter existing responsibilities under law. The State Department believes, however, that a specific reference is necessary to preserve the present understanding between it and CIA regarding information provided to ambassadors in accordance with 22 U.S.C. 2680a. Accordingly, the phrase "including those established under 22 U.S.C. 2680a" has been added to the end of this new Section 111(c) despite the shared belief of the rest of the working group that this phrase is unnecessary.

Issue 1 - Entities of the "Intelligence Community" - Section 104(16)

Description. As introduced, S.2525 would include within the "intelligence community," defined in Section 104(16), the Office of the DNI, CIA, NSA, DIA, INR at the State Department, any Office within DOD

conducting special reconnaissance activities," the "intelligence components" of the military services and of the FBI, Treasury, DEA and Energy, their successors, and any other components of departments and agencies determined by the President to be engaged in "intelligence activities." Except to the extent the language describing the DOD reconnaissance offices differs slightly, and except for the use of "components" instead of "elements," this conglomeration of entities is essentially the same as the definition of "intelligence community" in Executive Order 12036. The effect of this definition in conjunction with various other provisions of the bill, as revised by the working group, is to subject these entities and components of entities to the restrictions of the bill and to authorize them to conduct special, foreign intelligence, counterintelligence, and counterterrorism activities as those terms are themselves defined in the bill.

Nature of the Issue. There is disagreement as to whether this identification of elements of the intelligence community should be more or less specific, or should be made identical with, the E.O. 12036 definition.

Commentary and Analysis. One view is that if this enumeration is to be statutory it should identify specifically, as is done with regard to INR in the State Department, which elements of the various departments and agencies with both intelligence and nonintelligence functions are included within the coverage of the bill. This would serve the purposes of informing the public concerning which parts of the government are engaged in these activities and would eliminate any question, both within and outside the government, as to which elements are subject to

the various restrictions imposed upon intelligence activities. The counterargument is to the effect that no real purpose is served by such public specification, that the identity and character of these various elements is subject to change from time to time, and that the maximum degree of flexibility should be preserved for the President in this regard.

A decision to specify the elements of the various departments and agencies to be included in the "intelligence community" in statute will have to be preceded by an executive branch effort to identify these elements since in some instances there appears to be no clear understanding of which elements are "intelligence components." In any event, even if the definition now in the bill is accepted by the SCC, such a survey should be conducted in order to be in a position to respond to congressional inquiries as to what that definition encompasses.

The principal entities as to which there is some general concern and lack of precision in this regard are the "intelligence components" of the Drug Enforcement Administration in the Department of Justice, the "intelligence components" of the Department of Energy, and the "intelligence components" of the Department of the Treasury. In addition, as to the "intelligence components" of the military services, there is specific disagreement as to whether all or part of the Army Intelligence and Security Command (INSCOM), and the counterintelligence elements of the Naval Investigative Service (NIS) and of the Air Force Office of Special Investigation (OSI) should be included in the intelligence community. The views of the entities concerned and the Justice Department will be presented to the SCC independent of this paper for consideration along with this issue.

It is argued by some, in the alternative, that the enumeration of entities in the "intelligence community" should be even less definite and that, aside from CIA, NSA, DIA, INR, and the Office of the DNI, the definition should include a general provision authorizing the President to designate which, if any, portions of the other departments and agencies should be included at any particular time. This would provide the President with much greater flexibility and would allow immediate designation of entities clearly within the community while allowing time to identify the remaining elements. However, such an approach would also allow abuse of that discretion and provide greater uncertainty from the public and control points of view.

It is the recommendation of the working group that the SCC authorize a survey for this purpose and adopt the approach of designating in the "intelligence community" definition those entities which clearly should be included (CIA, NSA, Office of the DNI, DIA, INR at State, the DOD reconnaissance offices), and including a general provision authorizing the President to designate those other entities or parts of entities which should be included in the community from among the remainder (intelligence elements of FBI, Treasury, DEA, Energy, NIS, OSI, INSCOM) and their successors or other entities which may develop in the future.

Issue 2 - "Intelligence Activity" - Section 104(15)

Description. This issue, not entirely unrelated to the issue regarding which entities should be included in the "intelligence community," relates to the proper scope of the activities which should be included

include "foreign intelligence" and "foreign intelligence activity,"
"counterintelligence" and "counterintelligence activity", "counter-
terrorism intelligence" and "counterterrorism activity," and incorporate
these various forms of activity, along with "special activity," within
the meaning of "intelligence activity." Section 111, as revised by the
working group, would authorize entities of the intelligence community to
conduct "intelligence activities" in accordance with the provisions of
the bill. These definitions, as written and used in the unrevised bill,
would be sufficiently broad as to have the potential to draw under the
coverage of the bill the law enforcement or other non-intelligence
functions of entities such as the FBI, the military services, the Customs
Service and the Secret Service. In addition, these definitions, as
written, would seem to include other activities such as the security
programs of the military and other entities, the communications security
functions of NSA, and the overt reporting from abroad of the State,
Treasury, Commerce and Agriculture Departments and others.

Nature of the Issue. The issue here is whether the legislation may
be modified so as to include activities properly subject to the authorities
and limitations of the bill and at the same time to exclude activities
not properly so subject, whether or not performed by entities within the
"intelligence community."

Commentary and Analysis. Greater precision in defining the
"intelligence community" will alleviate much of this concern if it is
determined to be appropriate to exclude entities such as the Customs,
Secret and Foreign Services. As for the concern regarding law enforce-
ment or nonintelligence activities of entities both within and outside
the "community," the addition of a new Section 111(c), providing that

nothing in the bill will prohibit or affect such activities by any department or agency, should be dispositive.

There remains, however, the concern regarding the inclusion of the various personnel, physical, document and communications security programs and such activities as overt reporting from abroad by the Foreign Service, Treasury, Commerce, FAA, Agriculture and others, particularly with regard to the potential this raises for their subjugation to the review and budget authorities of the DNI.

The DNI budget authority is not a real problem because of the manner in which the "national intelligence budget" is defined in Section 104(24), as revised. Unless the security programs or the overt reporting activities now fall within the Consolidated Cryptologic Program or the General Defense Intelligence Program, which it is presumed they do not, they will not be included in the national budget and thus be subject to the DNI budgetary authorities unless the DNI and the head of the relevant department or agency agree to their inclusion.

As for the other DNI review authorities, the problem centers, as to the security programs, on the definition of "counterintelligence activity" in Section 104(6)(B) which as written includes "any activity undertaken to counter the espionage...activities of a foreign government." This would appear to encompass all security programs, as well as traditional counterintelligence operations, and, when read in conjunction with Section 114(b)(2) authorizing the DNI to coordinate such activities abroad, might even be construed to displace the Secretary of Defense from the principal role in the U.S. communications security program.

The danger in excluding these security programs entirely from the coverage of the bill is that activities may be allowed to proceed under the rubric of "security programs" and thus evade the limitations otherwise applicable to them if properly identified as "intelligence activities." For the purposes of Title I, however, and based on the twin premises that these programs will be subjected to appropriate restrictions in Title II and that these programs are currently excluded in toto from the review and coordination functions of the DCI, this problem may be resolved simply by revising Section 104(6)(B) to read "any activity, except for personnel, document, physical, and communications security programs undertaken to counter...."

The difficulty regarding overt reporting from abroad by various departments centers on Sections 104(13), (14) and (22) which define "foreign intelligence" and "foreign intelligence activity" broadly enough to include such reporting, and then includes this broad concept of "foreign intelligence activity" as the major element in the definition of "national intelligence activity." The subsequent authorization of the DNI in Sections 114(b)(1) and (c) to coordinate and review all "national intelligence activities" of the U.S. might be construed so as to include these overt reporting programs. One suggested means of resolving this ambiguity would be to limit the definition of "foreign intelligence" to the type of information described but only when collected by entities of the intelligence community. However, because this would result in the circularity of authorizing entities to do certain things and then defining those things as what those entities do, and since "foreign intelligence" is used throughout the bill so that such a change may have

serious unforeseen consequences, this change does not seem advisable. The alternative is to substitute "entities of the intelligence community" for the words "United States" in both Sections 114(b)(1) and (c). This change will exclude these overt collection activities from the DNI review authorities and is based on the premise that the DCI does not, and the DNI should not, have any review or coordination functions as to those programs.

Issue 3 "Intelligence Sources and Methods" - Sections 104(17) and (19)

Description. The bill, as written, would define intelligence sources and methods in a limited manner which would require a showing that the disclosure of a source or method would make it "vulnerable to counteraction which could nullify or significantly reduce its effectiveness" in providing intelligence or supporting intelligence activities. Section 114(1), as revised, would continue in the DNI the existing responsibility of the DCI to protect intelligence sources and methods from unauthorized disclosure. The effect of the bill's definitions would be to limit this protective authority to present, as opposed to past or future, sources or methods information, and to establish a new standard of proof which would be applicable to all exercises of this protective authority.

Nature of the Issue. CIA desires much broader definitions of intelligence sources and intelligence methods *g* not limited *g* to present sources or methods and not subject to a "risk of harm" factor, so as to retain intact the existing protection for such information.

Commentary and Analysis. The Department of Justice has a twofold concern regarding these broadened definitions, included in the revised version of Title I at Tab C. The first area of concern is that these broad definitions, coupled with the DNI protective authority, may be subject to misconstruction and overextension. The authority could be invoked, conceivably, to protect even an issue of the New York Times and might be abused by an interpretation that the responsibility authorizes surreptitious entries and various forms of surveillance as part of "leak" investigations. The second concern is related to the current efforts of the Justice Department to draft a proposed statute to provide criminal sanctions for unauthorized disclosure of intelligence sources and methods. In order to have any prospect of acceptability, such a statute must be narrowly drawn and cannot be based upon such broad definitions of sources and methods with no "harm" factor included as a element of the offense to be punished. The definitions in this bill and the proposed criminal statute should be consistent.

In view of the CIA, however, the nature and extent of the protective authority provided in this bill will strike to the very heart of the intelligence function and there should be no alteration, real or potential, in the current authority. Concerns as to possible abuses and misinterpretation of this authority may be avoided by explanatory language in the legislative history and the various reports which will accompany this bill through the legislative course. Further, there is no reason the definitions in this bill relating to all-purpose protection of sources or methods must be the same as those in a statute imposing criminal sanctions and obviously requiring higher thresholds to be workable.

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The definitions in this bill must be as broad as possible to account for the past, present and future development and use of sources and methods, all of which require protection to maintain an effective intelligence system. Further, any limiting amendment to the current authority would be viewed by sources as a further lessening of this government's ability to provide them continued protection and would result in rendering irrelevant the invaluable body of law and precedent which has been built up, particularly as regards the authority to withhold information under the Freedom of Information Act, around the current authority. See, e.g., Halperin v. CIA, C.A. No. 76-1082 (D.C.D.C. March 7, 1978); Baker v. CIA, 425 F. Supp. 633, 636 (D.C.D.C. 1977); Bachrack v. CIA, CV No. 75-3727 - W.P.G. (D. Calif. May 13, 1976). Without this clear authority to protect information, CIA would be forced to rely upon the vagaries of the classification system. Such reliance, or the inclusion in these definitions of a risk factor, will require the Agency to meet the standards of proof erected and to risk a denial of protection by a judge who disagrees with the assessment of likely damage from a disclosure. A retreat in any degree from the current authority to withhold information so vital to the national interest would be particularly anomalous in light of existing federal laws which endorse protection of peanut and other crop statistics, insecticide formulas, census information, proprietary information and trade secrets, various forms of credit and bank data, and many other forms of information, obviously because of a recognition of the fact that lack of protection would lessen the willingness to provide such information.

V. STATUS, ROLE AND AUTHORITIES OF THE
DIRECTOR OF NATIONAL INTELLIGENCE

This issue actually consists of several sub-issues, each related to the basic policy question of what should be the proper form and nature of the position of "Director of National Intelligence" (DNI) embodied in Title I of S.2525. The character of this position, and consequently the effectiveness of its incumbent, will largely be determined by decisions regarding its organizational setting, the official status to be accorded the position, the conditions imposed upon the term of office associated with the position, and the extent and nature of the authorities which accrue to the position.

If enacted as now written, S.2525 would create a DNI with responsibilities and authorities including those now possessed by the Director of Central Intelligence under Executive Order 12036 but also with additional authorities which would go beyond that order. In summary, the DNI would be a Cabinet-level official. There would be created to assist the DNI an Office of the DNI which would include the DDNI and up to five ADNIs, all of whom would be Senate-confirmed Presidential appointees, and a DNI staff. The DNI would also be head of CIA, although, as explained below, this function may be removed by the President and reposed in the DDNI or an ADNI. The bill would also empower the DNI to recommend to the President annually which intelligence activities should be designated as "national" in nature and thus be subject to the DNI's enhanced authorities. (§112). The authorities now provided in E.O. 12036 would be supplemented by broad supervisory authority to provide guidance to heads of intelligence entities in furtherance of the generalized DNI functions of providing necessary information and analyses to both

the executive and legislative branches and ensuring national intelligence activities are conducted in compliance with the Constitution and law (§114(c)). The DNI also would exercise authority under S.2525 to evaluate, and take action necessary to improve, the quality of national intelligence. (§114(h)). Services of common concern would be assigned to various entities by the DNI (§114(k)), and on the face of the bill the DNI would have authority to separate persons employed by any entity of the intelligence community. (§114(m)). Finally, the bill would add the requirement that all entities of the community furnish the DNI with all internal analyses of national intelligence information (§114(r)), and with the various inspector general, general counsel, entity head, IOB, and Attorney General reports required by the bill concerning the legality or propriety of each entity's intelligence activities. (§§151(d), (e), (f), (g)).

As is described below, the charter legislation working group has attempted to recast this statutory DNI to more closely resemble the model established in Executive Order 12036. Nonetheless, because the statutory version must of necessity depart from that model in some respects, and because charter revision allows attention to matters which could not be addressed in an Executive Order, such as grade and term of office, certain issues remain and appear sufficiently significant to require the attention of the SCC.

Issue 1 - Organizational Setting - Section 117 - DNI as Head of CIA

Description. Section 117 authorizes the President to transfer from the DNI to the Deputy DNI (DDNI) or to one of five Assistant DNIs (ADNI) "any or all of the duties and authorities" of the DNI as head of the Central Intelligence Agency. Such a transfer would be conditioned only upon the recipient being a civilian, on notice to Congress at least 60

days prior to the effective date of the transfer, and on the failure of Congress to move its disapproval of the transfer. This action would leave the DNI with an independent staff organization created by the bill and called "The Office of the Director of National Intelligence" within which would remain the DNI, the remaining DDNI and ADNIs, and such staff elements as are required to perform the responsibilities of the DNI. Title IV of S.2525 provides that any DDNI or ADNI to whom are transferred the responsibilities of head of CIA will remain subject to the supervision of the DNI and responsive to the intelligence plans, objectives and requirements established by the DNI. (Section 412(a)). These provisions bring into focus the issue of whether the DNI should remain head of CIA.

Commentary. It appears this provision is included in the bill as a result of an unresolved divergence of views within the Senate intelligence committee as to whether the DNI should be separated from CIA. Even as a compromise position, however, this approach is not satisfactory. The argument in favor of separating the DNI from CIA is essentially that such an act will enhance the Director's community role by freeing him from the suspicions and allegations of bias on behalf of CIA which have arisen in some quarters and may to some extent have interfered with the effective and complete performance of the central, coordinating function originally intended for the Director of Central Intelligence. Arrayed against that position are serious questions as to the effectiveness of such a separated official, isolated and devoid of any direct organizational base of support for authorized functions, as well as the danger of politicizing the position because of its resulting increased dependence upon the favor of the President and the White House staff. The proposed legislation perpetuates these questions without resolving the perception problem. It would result in prolonged uncertainty on the part of the DNI and CIA regarding the

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continuity of their relationship. Even were the transfer authority actually to be implemented by a President at some future date, under Title IV the new head of CIA would have no truly independent status but would remain subject to the supervision of the DNI. Furthermore, unless such a transfer is also intended to be a device for the dismemberment of CIA - as, for instance, a means to clarify the bill's confused lines of production responsibility by removing CIA's production capability and vesting it in the Office of the DNI - the remaining DDNI and ADNIs, potentially five high-level officials would exist in the Office of the DNI with virtually no organizational or functional base. Otherwise, since there would be no other entity upon which to rely and since Title IV authorizes various forms of CIA support to the DNI, the DNI and the Office of the DNI would remain heavily dependent upon CIA for intelligence and administrative support services. The transfer of authorities would thus have few if any positive effects, would almost certainly not enhance the status or community role of the DNI, and could have the effect of weakening the positions of both the DNI and head of CIA rather than strengthening either.

The President has the authority, under the Reorganization Act (5 U.S.C. 901 et seq.), as reenacted from time to time, to separate the DNI from CIA or to transfer various functions as necessary. Thus, unless Congress should allow the Reorganization Act to lapse and refuse to reenact it, Section 117 serves no real purpose in this bill except to avoid certain of the procedural and reporting requirements of that Act. As the working group sees it, this slight benefit is not worth the resulting cost in terms of the potential for uncertainty and confusion which it may generate. Finally, the rather smooth functioning of the

DCI fulfilling dual responsibilities as head of CIA and principal intelligence officer for the U.S. Government, calls into question the basic need for any separation of the DNI from CIA.

Issue 2 - Status - Section 113 - DNI Level and Support Staff

Description. The cumulative effects of Sections 113, 116 and 702 would be to create a DNI at Level I of the Executive Pay Schedule (EPS), supported by staff elements of the Office of the DNI, a Deputy DNI at Level II, up to five Assistant DNIs at Level III, and the resources and personnel of CIA. The DNI, DDNI and ADNIs would be Presidential appointees and would require Senate confirmation. These provisions raise the issue of the official standing to be accorded the DNI.

Commentary. Including the DNI among the officials at Level I of the EPS will place that position at a level held now by members of the President's "Cabinet" and the Special Representative for Trade Negotiation. The DDNI would be raised to the level of the Deputy Secretaries of the various departments, and any ADNIs who are appointed would be placed at the Assistant Secretary level. In effect, the DNI would be accorded Cabinet-level status and be supported by a group of senior officials in a framework roughly equivalent to the organization of the Cabinet departments.

It is apparent that the "rank" of the DNI must be based upon a thorough consideration of the extent and importance of the authorities and responsibilities vested in that office. Further, it can be generally agreed that a DNI with the far-reaching powers embodied in that office by S.2525 would surely merit Cabinet-level treatment. What is not so readily apparent is whether that status should be accorded to a DNI with

authorities more closely paralleling those in Executive Order 12036. The argument against that status is essentially that fewer policy and management responsibilities are vested in the DNI than are vested in existing Cabinet-level positions. Neither Executive Order 12036 nor its predecessor E.O. 11905 did or could, of course, effect such an increase in the level of the DCI despite the sizeable elaboration and enhancement of the responsibilities of that office which those orders accomplished. The DCI even now performs substantial and unique functions as the principal intelligence officer of the government, as the central figure in the management and coordination of activities and programs involving multiple departments and agencies and of vital national concern, and, as is not the case with the Special Trade Representative, as head of a sizeable agency with significant responsibilities relating to the national security and foreign policy interests of the U.S. The DCI now chairs the Policy Review Committee which is made up of Cabinet-level officers, has frequent official interaction on an equal basis with officers at that level, and deals directly, as do those officers, with the Congress and the President. With these responsibilities supplemented by incidentally necessary authorities, formalized and cast in statute, there is much to be said for establishing a DNI at Level I to remove any hint of an impediment to their full performance. (This argument assumes, of course, that the DNI will not be separated from CIA since there would be difficulty justifying this increase if such a separation were to be advocated.)

The status of the DDNI and ADNIs would follow upon the increased role of the DNI. It is felt by some that authorizing five ADNIs requiring Senate confirmation would be overly bureaucratic and threaten politicizing the U.S. intelligence structure. In the former regard, it

should be noted that the bill authorizes "not more than" five ADNIs and the President need appoint, and the Senate confirm, only that number which the DNI is able to justify. As to the Senate confirmation issue, to the extent the Senate is aiming for accountability and control through this mechanism, it may be possible to convince the Congress that it may rely upon other means, such as hearings, briefings and other formal or informal contacts with these officials to achieve that goal. On the other hand, appointment and confirmation may make for increased independence on the part of these officials, and, to the extent the bill requires confirmation of the DNI, DDNI, and other officials in the intelligence structure, such as the general counsels of CIA and NSA, politicization of the ADNI positions is a minor concern.

Issue 3 - Term of Office - Section 113(b) - Conditions on Length of DNI and DDNI Service

Description. The bill would establish a fixed six year term for the DNI and the DDNI, with a second term of six years allowed to each upon reappointment and reconfirmation. Each official would serve at the pleasure of the President during these terms. No person would be allowed to serve in either or both offices for a total of more than 12 years. The extent and nature of conditions which should be imposed upon the terms of these officials is the issue raised by these provisions.

Commentary. The requirement of a fixed six year term, followed by reconfirmation and another six year term, is unprecedented and unwise for both the DNI and DDNI. In addition to the uncertainties and lack of continuity which such limited terms would present, there is the risk the reappointment hearings will develop into a vehicle for harassment and inquiry into all events of the first six years. It would be preferable

to have a fixed ten year term for the DNI comparable to that of the Director of the FBI, but also subject to the pleasure of the President. This would provide continuity and accountability, but would also make allowance for the special personal relationship which must exist between the President and the principal intelligence officer of the government. Also, a capable DDNI should not be penalized for experience gained in that capacity and should be allowed the opportunity to serve a full term as DNI rather than being limited to total service not exceeding a full term as DNI.

Issue 4 - DNI Role - Section 114 - Authorities of the DNI

Description. As stated earlier, S.2525 would provide the DNI with authorities exceeding those furnished the DCI in Executive Order 12036. The working group has revised or replaced various existing statements of the DNI's authority in Sections 112, 114, 115, 121 and 151 of the bill to conform roughly to the executive order model and to eliminate authorities which appeared to conflict with or exceed that model. As a result there is general agreement that the DNI will retain the following authorities and responsibilities:

- serve as the principal U.S. intelligence officer (§114(a));
- coordinate national intelligence activities, counter intelligence activities abroad, and counterterrorism activities of the intelligence community abroad (§114(b));
- review all ongoing and proposed national intelligence activities to ensure efficient, effective direction and administration (§114(c));
- act as the head of CIA and the Office of the DNI, and be supported by the DDNI and ADNIs (§113, 114(d), 116(a));

- coordinate and direct national intelligence collection activities by establishing procedures to increase the national intelligence contribution of nonintelligence community entities, and coordinating all clandestine collection activities abroad (§114(e)(2), (3));
- be responsible for production and dissemination of national intelligence and levy analytic tasks on departmental intelligence production organizations (§114(f));
- be responsible for dissemination of national intelligence and establish procedures to ensure intelligence community and other departments, agencies and military commanders receive relevant national intelligence (§114(g)(1), (3));
- ensure appropriate implementation of covert action and sensitive clandestine collection activities (114(i));
- formulate policies regarding intelligence arrangements with foreign governments and coordinate intelligence relationships between U.S. and foreign intelligence entities (§114(j)(1), (2));
- promote the development and maintenance of services of common concern by intelligence community entities (§114(k));
- protect intelligence sources and methods and establish minimum security standards for related information and materials (§114(l));
- conduct a program to protect against overclassification (§114(New));
- protect the organization, functions, etc., of persons employed by the Office of the DNI (§114(New));

- appoint, promote, separate, and terminate in the interests of national security, employees of, and security clearances of contractors to, the Office of the DNI (§114(m), (n));
- receive, or designate the appropriate recipient of, all national intelligence obtained by any department or agency (§115);
- establish advisory committees as necessary and waive, when necessary, the reporting requirements of the Federal Advisory Committee Act (§116(b));
- account by voucher for the expenditure of funds appropriated to the Office of the DNI for national intelligence, counterintelligence, and counterterrorism activities (§122(b));
- establish security standards for the conduct of GAO audits or reviews of national intelligence, counterintelligence, or counterterrorism activities requested by or through the congressional intelligence committees (§123(c)); and,
- exempt funds from such audits when essential for security reasons (§123(e)).

These responsibilities are essentially identical to, or consistent with, existing authorities of the DCI under Executive Order 12036, and other sources of authority such as National Security Council Intelligence Directives. There remain, however, several issues concerning whether additional statements of DNI authority are new and additional to existing authorities, or are merely attendant, necessary, and incidental to the effective performance of existing authorities.

Commentary.

- a. Section 114(e)(1) of the bill provides that the DNI, in order to coordinate the intelligence community, shall develop "plans, objectives and requirements" for the intelligence community

as necessary to meet "needs and priorities" established by the National Security Council.

Nature of the Issue. The issue arises over whether this provision grants the DNI greater authority than now is the case because of its departure from the language of the executive order which authorizes the DCI to translate "requirements and priorities" developed by the NSC into "objectives and targets."

Analysis. This may be a mere semantic dispute, since in either case it is the NSC which establishes the "requirements," "needs," or "priorities" which the DCI or DNI must draw upon to develop and assign specific collection "requirements," "objectives" and "targets" for both present and expected intelligence needs. It is feared that "requirements" may carry with it a directory-tone which will allow the DNI to exert too much control over collection resources. On the other hand, however, "requirements" is used in the intelligence sense just as often to mean a set of goals or aims to be achieved. Further, the phrase "plans, objectives and requirements" may more closely describe the actual function performed by the DNI in guiding, not directing, the collection process, than does "objectives and targets" which connotes a more specific operational involvement than would in fact be the case.

b. Section 114(g)(2) authorizes the DNI to "establish procedures to increase the usefulness" of national intelligence information to departments and agencies.

Nature of the Issue. The issue here is whether this authority will allow the DNI to exert control over collection activities.

Analysis. This authority, it is believed, may be used by a DNI to wrest control of collection resources from department and agency heads and should be reduced merely to establishing the "format" in which this information is presented. On the other side of the argument, however, such procedures will extend beyond mere type-face and other "packaging" elements, to the manner and rapidity of publication and dissemination, designation of appropriate recipients, desired levels of classification, and other factors attention to which may be necessary to assure that consumers receive information which is useful to them. This authority is not new but is a necessary part of the DNI's overall responsibility for the production of national intelligence.

c. Section 114(j) would require the DNI to consult with the Secretary of State in formulating policy regarding intelligence arrangements with foreign liaison services and in coordinating all such arrangements.

Nature of Issue. These provisions raise the issue of the appropriate role of the Secretary of State in regard to intelligence agreements with foreign liaison services.

Analysis. This consultation requirement is necessary, it is urged, to ensure the Secretary is aware of the extent and nature of these relationships and is given the opportunity to make comment. By the same token, while it may be conceded the Secretary should be consulted in the formulation of policy in this area, it will needlessly hinder the day-to-day activities of the DNI, officials actually performing this DNI function, and intelligence officers in the field to require that the State Department also be consulted in regard to all relationships once that policy direction is established.

d. Section 114(n) would grant the DNI authority to terminate, as necessary or advisable in the interests of national security, not only the security clearance of contractors of the Office of the DNI, but also contractors of any other entity of the community.

Nature of the Issue. The issue as to this provision is not so much whether it exceeds authority now exercised by the DCI, but whether such authority may potentially interfere with the conduct of departmental activities.

Analysis. Opposition to this authority centers on the concern that its exercise by the DNI might preclude the use of effected contractors on nonintelligence projects which also require security clearances. While this concern may be sufficient grounds to limit this DNI authority to contractor clearances relating to intelligence activities, the basic authority to terminate these clearances may be justified as a necessary adjunct to the responsibilities of the DNI to establish and maintain security standards and to protect intelligence sources and methods.

e. Section 114(q) would allow DNI review of intelligence and intelligence-related activities of the government as appropriate to carry out the duties assigned to the DNI.

Nature of the Issue. The issue as to this provision centers on whether this exceeds the authorities provided in E.O. 12036 and would empower the DNI to inquire into matters not properly within the DNI's area of concern or whether this is merely an ancillary authority essential to the effective performance of the DNI's overall responsibilities for national intelligence.

Analysis. The definition of "intelligence-related activity" in Section 104(18), as revised, would include any activity that is capable of providing national intelligence or of supporting national intelligence activities (defined to include special and foreign intelligence activities), any activity that is devoted to the support of, or conducted for the purpose of training persons to participate in, any intelligence activity (defined to include special, foreign intelligence, counterintelligence and counterterrorism activities), and any activity involving research and development of intelligence capabilities. The term would not include activities closely integrated with weapons systems. (The Defense Department, as has been stated previously, would like this definition and the references to this term deleted regardless of the outcome of this issue.)

Section 114(q) would authorize the DNI, in order to carry out the duties of that office, to review all intelligence and "intelligence-related" activities of the government and all research and development in support of those activities.

The argument against this authority is not based upon the premise that the DNI should be strictly limited to "national" intelligence activities and should have no authority whatsoever to determine whether various departmental activities should be more appropriately categorized as national intelligence activities, or whether departmental and national activities are duplicative. This type of review is in fact done now. However, the authority in Section 114(q) is too broad for this purpose, especially since under Section 112(a), as revised, the President will have the authority to designate additional national intelligence activities from among the foreign intelligence activities of the government, Section 114(e)(2) will enable the DNI to establish procedures, in coordination

with the entity head, to increase the national intelligence contribution of entities outside the intelligence community, Section 114(p) will allow the DNI to obtain information from any entity when necessary to perform the DNI's duties, and Section 115 will require all entities to furnish all national intelligence to the DNI. These sections will provide the DNI with sufficient authority to inquire into a broad range of activities and, together with a flexible revised definition of the "intelligence community," will allow the identification and designation of additional activities as national intelligence activities when appropriate.

The counterargument is that the DNI is given broad authorities and responsibilities as to all national intelligence activities. Even as revised, Section 114(b) charges the DNI with broad and varied coordination responsibilities, 114(c) requires the DNI to review continuously all existing and proposed national activities to ensure their proper and efficient regulation and administration, and 114(e) imposes general responsibility on the DNI for collection of national intelligence while 114(f) and (g) do the same as to its production and dissemination. These responsibilities cannot be performed fully and effectively without authority to inquire into the existence and nature of activities which may be parallel, duplicative, or necessary and more appropriate to national versus departmental activities. The authorities provided in other portions of Title I are all limited in one way or another to "foreign" or "national" intelligence. Section 114(p), while seemingly a broad authority, is limited to inquiries necessary to perform the DNI's "duties." Those duties are essentially restricted to "national" intelligence and it may be argued this provision furnishes no authority to inquire into departmental programs. Section 114(p) may be

sufficient and allow the deletion of Section 114(q) if modified to allow the DNI to obtain information pertaining to "intelligence activities" as well as information necessary to the performance of the DNI's duties.

f. Section 121 essentially parallels the language of Executive Order 12036 regarding the budgetary authority of the DCI and provides virtually identical authorities to the DNI.

Nature of the Issue. There is disagreement concerning whether the specific implementing authorities stated in subsections (a)(1) through (4) are necessary.

Analysis. (1) While it is believed by some that such details are undesirable in this statute, the same considerations of certainty and permanency which compelled their inclusion in the executive order also argue for their inclusion here. If these authorities are retained, the additional executive order authority to oversee reprogramming decisions should be inserted into this chain of authorities in order to control subsequent reshaping of budget decisions. (2) The final issue raised by these provisions concerns Section 121(b) which requires that departmental budget decisions not be allowed to offset national budget determinations. There is no precise counterpart to this provision in the executive order and it is argued this provision is unnecessary and should be deleted. On the other hand, there are provisions in the order exhorting particular officials to the same end, and such a safeguard is a desirable and necessary adjunct to the national intelligence budget authorities, again to control subsequent reshaping of that budget.

VI. OVERSIGHT AND ACCOUNTABILITY

A. EXECUTIVE BRANCH. The largest issues on this score surround the provision in Section 151 which sets up the IOB as a statutory entity composed of three members subject to Senate confirmation. The most basic of these issues concerns whether the IOB should be mentioned at all in the bill. Assuming the Administration favors statutory recognition of the Board, another issue of comparable importance is whether the legislation should include a detailed charter of the type created by Section 151 or whether on the other hand it would be preferable if the President were simply to be given a broad general statutory mandate to establish such a Board, with the particulars as to membership, authorities, etc., left to the President's discretion. Finally there are issues as to what the particulars should be if the legislation is to include a detailed charter.

Issue 1. Should the IOB Become a Statutory Entity

Commentary. The enactment of a statute directing that it be established would of course put the IOB on a permanent footing and foreclose possible decisions by future Presidents who might be inclined toward less rather than more oversight of intelligence activities and who might otherwise move to modify or dismember the Board. At the same time it is probably true that the effectiveness of the Board will always depend on the support of the President that it serves, and therefore a question exists as to whether there is anything to be gained by converting from the Executive Order arrangements to a Board with a statutory foundation.

The IOB believes strongly that provision for its existence should be included in any charter legislation. It argues that it has become an integral and necessary part of the intelligence machinery, that its authority would be enhanced by statutory recognition, and that an Administration position urging deletion of the IOB provisions in Title I would be seen as a retreat from the commitment to effective oversight. The argument on the other side of the issue is that the role of the IOB is still experimental to a degree, and that there is a lesser imperative for the Board today than was the case at the time of its formation in February 1976, prior to the establishment of either the SSCI or HPSCI, that over the long term there may be no greater justification for a special Executive Branch entity charged with oversight of intelligence activities than there is with respect to many other governmental activities having a potential for abuse, and in any event that the President's freedom to make or alter these arrangements as he sees fit should be preserved, unencumbered by a need to seek an amendment of a statute.

Issue 2. Should the Members of the Board be Subject to Senate Confirmation

ILLEGIB

Commentary. The IOB's negative views on this issue are stated on page 1 of the IOB comments on S.2525, attached at Tab D. Those views are as follows:

The provision for advice and consent to the Senate should be deleted. The members of the IOB should remain confidential advisers to the President performing an independent oversight role for him. They are not officers running intelligence agencies or in charge of operational programs. Making IOB members subject to



confirmation would pose the same threat to their ability to provide confidential evaluation and advice to the President as would a requirement for Senate confirmation for any other part of the President's White House Office staff.

This argument appears to be somewhat two edged, because the point that the Board is solely accountable to the President, and the analogy to White House Staff, weakens the case for statutory recognition.

Issue 3. Should the Legislation Include a Detailed Charter

Commentary. Because the IOB charter provisions in Section 151 are based on the E.O. 12036 model, the question here is whether it is advisable to make a statutory fixture out of that model. Although the same point could be made with respect to other Title I provisions that are or in the view of the working group should be patterned after E.O. 12036, there is at least some reason to doubt that the body of experience acquired in the last two years is sufficient to justify confident judgments that the present oversight scheme is the best one that could be devised. Yet that scheme would be frozen by the enactment of Section 151. To be offset against this potential disadvantage are the gains, somewhat speculative at best, to be derived from legislating the oversight arrangements as opposed to letting them remain a creature of Executive Order.

Issue 4. What Details are Appropriate in a Statutory Charter

Commentary. The following subissues are presented by the existing contents of Section 151:

a. IOB Reporting to the Attorney General and the DNI.

Sections 151(d)(2), would require the IOB to furnish copies of its reports to the President and, as appropriate, to the Attorney

raise serious questions of legality. Also, under Section 151(d)(3) the DNI would be the recipient, as appropriate, of IOB reports as to serious questions of propriety. The IOB opposes these provisions insofar as they might be construed to require it to report its conclusions and evaluations to officials other than the President, and its position is stated in the relevant portion of Tab D. In addition, several members of the working group are of the opinion that the DNI, as head of an entity of the intelligence community, should not be privy to the reports to the IOB of the other entities. On the other hand, if the DNI is responsible, as is the case under Section 114(c), for the proper, efficient, and effective direction of national intelligence activities it will be important that the DNI be fully advised of these matters and any questions which may arise concerning ongoing activities or procedures.

So far as concerns the IOB's objections to Sections 151(d)(2) and (3), the working group believes the objections are not well founded. The idea of these provisions is not to force the IOB to give up its evaluations and conclusions to the Attorney General and the DNI but only to make known to these officials the existence of activities of which they have a need to be aware in the performance of their own functions. Given that meaning the provisions closely resemble other stated responsibilities of the Board, are not inconsistent with the counterpart provisions in E.O. 12036, and do not threaten the confidentiality of the relationship between the Board and the President.

b. Questions of "Propriety" and Other Aspects of the Reporting Standards. Section 151(e)(1) essentially reiterates the E.O. 12036 responsibilities of the inspectors general and general counsels to report to the IOB any intelligence activity which raises "any question of legality or propriety." The IOB, although commenting in the context of the frequency of reporting rather than the standards to be applied, "strongly recommend[s] retaining this provision in its present form [as it] reflects the current practice of the inspector general and general counsel within each agency." (TAB D.) However, the working group favors substitute language, and conforming changes elsewhere in the bill, that would require a matter to be reported only if it is believed to involve "a serious question as to whether there has been a violation of law." The proposal recommended by the working group would modify the standards for reporting to the IOB that are currently applicable under E.O. 12036, and that would likewise be applicable if Section 151(e)(1) were adopted in its present form, in two ways.

First, the requirement to report questions of propriety would be eliminated altogether. The quarrel with that requirement is that the term "propriety" is utterly indefinite, especially in the context of intelligence activities, having so many different possible meanings as to have no real meaning at all. To make this term the centerpiece of a statutory obligation strikes the working group as unfair to the officials on whom the obligation would be placed, opening them to second-guessing no matter which way they might make the necessarily subjective judgments about the propriety of lawful

intelligence activities. The working group would also be worried about the potential liability of these officials in connection with this obligation were the concept of propriety not so vague as to make the obligation virtually unenforceable. Further, a central thrust of S.2525 is to mark the bounds of legitimate intelligence activity, with the result that if the legislation is enacted there will be a rather comprehensive set of legal standards and therefore many fewer instances in which there is no standard to apply except a non-legal standard in determining the appropriateness of particular intelligence activities.

The Board on the other hand cites E.O. 12036 as conclusive evidence of the President's endorsement of propriety as a reporting standard. It argues also that notwithstanding the growing network of legal standards there are many gray areas between those standards and many situations in which intelligence activities may be questionable even if lawful. For these reasons it believes that the propriety standard should not be dropped.

Second, the working group would raise the reporting threshold as to questions of legality. The requirement stated in Section 151(e)(1), which picks up nearly identical language in E.O. 12036, is to report any intelligence activity that raises "any question of legality or propriety." The working group sees two problems with this standard. One is that the reference to "any question" makes the standard unmanageable, there being such a large number and variety of legal matters with which the intelligence entities must

and do deal. Therefore in practice a more narrow and realistic standard must be applied, and in that sense the requirement must be flouted if it is to be met at all. The working group would cope with this problem by adding the word "serious" to the standard, as a description of the legal questions that must be reported. This change would be faithful to the intent of the requirement and make possible more honest compliance.

The other problem has to do with the word "legality." For example, the withholding of a document requested under the FOIA can raise serious legal questions (whether the facts justify the claim of exemption, etc.) that the working group does not view as within the intended oversight jurisdiction of the IOB. To more accurately define that jurisdiction, and to make it clear that possible illegality is the touchstone, the working group would confine the reporting requirement to questions that are both serious and related to activities involving possible violations of law.

c. Instructions Not to Report to the IOB. Section 151(e)(5) would restate and elaborate upon the requirement of E.O. 12036 that inspectors general and general counsels report to the IOB any occasion on which they are directed by the heads of their entities not to report a matter to the IOB. The bill also adds a counterpart responsibility on the part of entity heads, in Section 151(g)(5), to explain any such direction in writing to the IOB. The bill also requires both types of reports to be furnished to the Attorney General, the DNI, and the HPSCI and SSCI. As is indicated in Tab D, the IOB is in favor of the

continuation of this type of requirement in statutory form. The working group, however, is opposed to these statements as demeaning to the inspectors general and general counsels and the heads of entities of the intelligence community. Further, such instructions would themselves raise questions of legality if there is to be a statutory obligation to report to the IOB and the inspectors general and general counsels need no such reminder to perform their obligations conscientiously.

Issue 5. Whether the Whistle Blowing and Whistleblower Provisions Should be Modified

Commentary. Section 151 contains a number of oversight provisions other than those relating to the IOB. One such additional provision, subsection (j), requires officers and employees of intelligence entities to report to their respective general counsel, inspectors general or entity heads any information on past, present or proposed intelligence activities that appear to be in violation of the Constitution or laws of the United States, Executive orders, Presidential directives or memoranda, or agency rules, regulations or policies. It is further provided along the same line that these procedures are not intended to be exclusive or to preclude direct employee reporting of such information to the DNI, Attorney General, IOB or the two intelligence committees. To fortify these provisions, the Attorney General is required by subsection (j)(3)(B) to "take all steps necessary" to ensure that employees who report such information in good faith are not subjected on that account to discipline, dismissal, or any other adverse personnel action.

The working group favors the deletion of subsection (j). In the first place, the basic reporting requirement strikes the working group as overly broad, covering as it does information on possible violations not just of law but of agency rules, regulations and policies. In the second place, the provision preserving the right of employees to report directly to the DNI, Attorney General, IOB or intelligence committees is unnecessary, because nothing in the bill would preclude such action in any event. Thirdly, it is not apparent how the Attorney General would discharge his duty to "take all necessary steps" to protect whistleblowers against reprisals. And finally, there is a concern that the proposed provisions could have the effect of conferring immunity against adverse personnel actions on employees who report information of possible wrongdoing, even when the action and the report are totally unrelated.

OK In place of subsection (j), the working group would add a new provision to subsection (g), which concerns the oversight responsibilities of heads of intelligence entities, requiring that employees be instructed to cooperate fully with the IOB and the Attorney General in the performance of their functions, and to report any violations of law to their respective general counsels, inspectors general or entity heads. Protection of whistleblowers would be accommodated by a provision that "no employee who so reports in good faith shall be subject to adverse personnel action solely on account of such reporting "

B. LEGISLATIVE BRANCH. Title I, as now written, is replete with requirements that various and sundry matters be reported to the HPSCI and the SSCI. These requirements, 20 in all, are identified and described in summary fashion in the table attached as Tab E. As has been indicated earlier in this paper, there has been a clear indication on the part of the SSCI staff of a willingness to delete any or all of these requirements and to rely entirely on the umbrella provisions of Section 152(a), which set forth broad obligations on the part of heads of intelligence entities to keep the SSCI and HPSCI "fully and currently informed" and, as may be requested by the committees, "furnish any information or material" in their custody or control. As the SSCI staff sees it, and the working group agrees, these provisions are sweeping enough to accomplish in one place all and more than would be accomplished by the many separate reporting requirements. That is, the committees could count on obtaining at their request, the same reports and information that they would receive under the specific requirements, making the latter unnecessary.

As it would be modified by the working group (by, among other things, adding a new subsection regarding reporting of questionable intelligence activities, to replace a provision deleted from Section 151), Section 152(a) would closely approximate Section 3-4 of E.O. 12036. The difference lies in the introductory statements that qualify the obligations. The issue has to do with the significance of that difference.

Section 3-4 of E.O. 12036 provides that the obligations to keep the committees "fully and currently informed" and to "furnish all information and material" will be performed;

Under such procedures as the President may establish and consistent with applicable authorities and duties, including those conferred by the Constitution upon the Executive and Legislative Branches and by law to protect sources and methods....
(Emphasis added).

The bill, by comparison, omits the underlined phrases and provides only that the performance of the obligations will be:

Consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches.

Issue. Is the Introductory Statement in Section 152(a) Acceptable.

Commentary. The reference to sources and methods which has been omitted in the bill appears to be duplicative and would be included, in any event, in the meaning of the phrase "all applicable authorities and duties," as would all other statutory responsibilities. And the Justice Department agrees that substituting "[T]o the extent not inconsistent with" for "[C]onsistent with" will make clear that the provision in the bill is not intended to be a waiver of any of the Executive's Constitutional authorities. It is likely this substitution will be agreeable to the Congress since this would merely amount to a confirmation of existing prerogatives.

By accepting reinsertion of the phrase "[U]nder such procedures as the President may establish," however, the Congress would be adding to the Executive's authorities in this regard at the expense of its own. On the other hand, from the point of view of the President, the omission of this language is of no legal significance. The basic authority of the President to invoke Executive Privilege is derived from the Constitutional

authorities inhering to the Office and cannot be supplemented by the language of an Executive Order. Consequently, the basic force and scope of this authority will not be reduced under the bill merely because the "procedures" language from E.O. 12036 is not included. The President would still be free to promulgate procedures for implementation of these reporting requirements after the enactment of this provision and such procedures would be valid to the same extent as would be the case prior to its enactment.

In other words, as slightly modified by the working group, Section 152(a) represents neither a loss in the President's authority to withhold information from the Congress, and more particularly the two intelligence oversight committees, nor a gain in the power of the Congress to obtain such information. It merely leaves the respective prerogatives of the two branches where it finds them, which is as the working group believes it should be.

1 ~~(B) when used in connection with the Federal~~
2 ~~Bureau of Investigation, refers to any means by which~~
3 ~~the true identity or affiliation with the Federal Bureau of~~
4 ~~Investigation of any activity, officer, employee, or agent~~
5 ~~of the Federal Bureau of Investigation is disguised or~~
6 ~~concealed; and~~

7 ~~(C) when used in connection with the National~~
8 ~~Security Agency, refers to any means by which the~~
9 ~~true identity or affiliation with the National Security~~
10 ~~Agency or the Department of Defense of any activity,~~
11 ~~officer, employee, or agent of the National Security~~
12 ~~Agency is disguised or concealed.~~

13 ~~(10) The term "departmental intelligence" means~~
14 ~~foreign intelligence that is collected, retained, processed or~~
15 ~~disseminated primarily for the use of the head of the depart-~~
16 ~~ment or agency for the conduct of the affairs of the individual~~
17 ~~department or agency and which has little or no significant~~
18 ~~national policymaking purpose.~~

19 ~~(11) The term "departmental intelligence activity"~~
20 ~~means any foreign intelligence activity, the primary purpose~~
21 ~~of which is to produce departmental intelligence.~~

22 ~~(12)~~ The terms "departments and agencies" and "de-
23 partment or agency" mean any department, agency, bureau,
24 independent establishment, or ~~wholly owned~~ corporation ^{chartered by}
25 the Government of the United States.

15

1 ~~which would, if disclosed, reasonably lead to the disclosure~~
2 ~~of an intelligence source or operation.~~

3 (18) The term "intelligence-related activity" means
4 any activity ~~that is~~—

5 (A) ~~a departmental or tactical intelligence activity~~
6 that has the capability to provide national intelligence
7 or to support national intelligence activities;

8 (B) ~~is~~ devoted to support of ^{any} ~~departmental~~ intelli-
9 gence activities;

10 (C) ~~is~~ conducted for the purpose of training person-
11 ~~nel for intelligence duties; or~~ ^{(participation in) activities}

12 (D) ~~is devoted to~~ ^{involving} research ~~on~~ or development of
13 intelligence capabilities.

14 Such term does not include any intelligence activity which
15 ~~is so~~ closely integrated with, ^{and primarily intended to provide} ~~a weapons system that the~~
16 ~~primary function of such activity is to provide immediate~~
17 ~~data for~~ ^{immediate} ~~targeting purposes for, that~~ ^{any} weapons system.

18 (19) The term "intelligence source" means a person,
19 ~~organization, or technical means which provides foreign~~ ^(foreign government, material, or technical or other means from which)

20 intelligence, counterintelligence, or counterterrorism intel-
21 ~~ligence, and which, if its identity or capability is disclosed,~~ ^{is being, has been, or may be, derived.}

22 ~~is vulnerable to counteraction that could nullify or signifi-~~
23 ~~cantly reduce its effectiveness in providing such intelligence~~

24 ~~to the United States. Such term also means a person or~~
25 ~~organization which provides foreign intelligence, counter~~

1 (i) the means by which its objective is accom-
2 plished;

3 (ii) the civilian population, government, or in-
4 ternational organization it appears intended to coerce
5 or intimidate, or

6 (iii) the locale in which its perpetrators operate
7 or seek asylum.

8 ~~(22)~~ The term "national intelligence" means foreign
9 intelligence which is collected, retained, processed or dissemi-
10 nated ~~primarily for the use of officials of the United States~~
11 ~~involved in the formulation and direction of national policy,~~
12 ~~particularly defense, national security, or foreign policy. Such~~
13 ~~term also means the production of intelligence analyses co-~~
14 ~~ordinated among the entities of the Intelligence Community.~~

15 ~~(28)~~ The term "national intelligence activity" means
16 (A) any special activity, ~~in support of national foreign policy~~
17 ~~objectives, or~~ (B) any foreign intelligence activity the pri-
18 mary purpose of which is to ^{collect or} produce national intelligence,
19 ~~Such term includes any foreign intelligence activity of~~
20 ~~the Central Intelligence Agency, the Defense Intelligence~~
21 ~~Agency, the National Security Agency, any office within~~
22 ~~the Department of Defense supervising special reconnais-~~
23 ~~sance activities, and~~ ^(C) any foreign intelligence activity ~~con-~~
24 ~~ducted by any other department or agency and designated~~

19

1 (27) The term "special activity" ~~in support of national~~
 2 ~~foreign policy objectives~~ means an intelligence activity con-
 3 ducted abroad which is (A) designed to further official
 4 United States programs and policies abroad, and (B)
 5 planned and executed so that the role of the United States
 6 Government is not apparent or acknowledged publicly. Such
 7 term does not include any counterintelligence or counterter-
 8 rorism activity or the collection, ^{retention} ~~correlation~~, processing, dis-
 9 semination and analysis of intelligence or related support
 10 functions, nor any diplomatic activity by the United States.

11 ~~(28) The term "tactical intelligence" means foreign~~
 12 ~~intelligence pertaining to the armed forces of a foreign gov-~~
 13 ~~ernment and required by the armed forces of the United~~
 14 ~~States to maintain their readiness for combat operations and~~
 15 ~~to support the planning and conduct of combat operations~~
 16 ~~by the United States.~~

17 ~~(29) The term "tactical intelligence activity" means the~~
 18 ~~collection, retention, processing, and dissemination of tactical~~
 19 ~~intelligence.~~

20 ~~(30) The term "United States media organization"~~
 21 ~~means any organization publishing on a regular basis for~~
 22 ~~public dissemination any newspaper, magazine, journal, or~~
 23 ~~other periodical publication, any news services, any radio or~~
 24 ~~television network or station, or any organization producing~~

() The term "United States," when used in a geographical sense, means the several States, the Virgin Islands, the Commonwealth of Puerto Rico, and the possessions and territories of the United States.

1 ~~that part of such organization is owned by one or more United~~
2 ~~States persons, the principal place of business of such orga-~~
3 ~~nization is in the United States, or the principal distribution~~
4 ~~of such organization is in the United States. Such term does~~
5 ~~not include any organization controlled or directed by a gov-~~
6 ~~ernment of a foreign country.~~

7 (21) The term "United States person" means—

8 (A) any individual who is a citizen of the United
9 States;

10 (B) any alien admitted for permanent residence
11 (as defined in section 101 (a) (20) of the Immigration
12 and Nationality Act), except that such alien may be
13 presumed to have lost status as a United States person
14 for purposes of this Act after one year of continuous resi-
15 dence outside the United States until information is ob-
16 tained which indicates an intent on the part of such alien
17 to return to the United States as a permanent resident
18 alien ~~is obtained~~;

19 (C) any unincorporated association organized in
20 the United States or a substantial number of whose
21 members are citizens of the United States or aliens law-
22 fully admitted for permanent residence ~~and which is not controlled or directed by a foreign power~~ except that an
23 unincorporated association outside the United States may

24 be presumed not to be a United States person until

25 information is obtained which indicates the contrary; or

(D) any corporation which is incorporated in the United States and which is not controlled or directed by a government of a foreign country, *except that a corporation or corporate subsidiary incorporated abroad, even if wholly or partially owned by a U.S. corporation is not a U.S. person.*

PART B—AUTHORIZATION FOR ~~NATIONAL INTELLIGENCE~~

ACTIVITIES, ~~COUNTERINTELLIGENCE ACTIVITIES, AND~~

~~COUNTERTERRORISM ACTIVITIES;~~ DIRECTOR AND

DEPUTY DIRECTOR; DUTIES AND AUTHORITIES

~~NATIONAL INTELLIGENCE ACTIVITIES, COUNTERINTELLI-~~

~~GENCE ACTIVITIES, AND COUNTERTERRORISM ACTIVI-~~

~~TIES;~~ AUTHORIZATION

SEC. 111. (a) The entities of the intelligence community *(intelligence activities)* are authorized to conduct, under the direction and control of the National Security Council, *but only in accordance with* ~~national intelligence activities,~~ *the provisions of this Act.* ~~including special activities in support of national foreign policy objectives (hereinafter in this Act referred to as "spe-~~
~~cial activities"), counterintelligence activities, and counter-~~
~~terrorism activities.~~

(b) ~~National intelligence activities, counterintelligence activities, and counterterrorism activities may be undertaken only by entities of the intelligence community and only in accordance with the provisions of this Act~~

(b) Nothing in this title shall be construed to prohibit *(retaining, analyzing, evaluating)* any department or agency from collecting, processing, ~~evaluating,~~

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 24 ating, or disseminating ~~departmental intelligence~~

(c) Nothing in this Act shall be construed to prohibit or affect any non-intelligence activities of any department or agency.

(d) Except as expressly provided, nothing in this Act shall be construed to affect or alter existing responsibilities under law.

1 PRESIDENTIAL DESIGNATION OF NATIONAL INTELLIGENCE
2 ACTIVITIES

3 SEC. 112. (a) The President shall determine ^{from time to time} annually
4 which ^{foreign} intelligence activities, if any, in addition to those spe-
5 cifically defined as national intelligence activities by this
6 title, shall constitute national intelligence activities for the
7 purposes of this Act.

8 ~~(b) The Director of National Intelligence shall, on an~~
9 ~~annual basis, submit to the President of the National Security~~
10 ~~Council a report describing the relationships among national~~
11 ~~intelligence activities and other intelligence and intelligence-~~
12 ~~related activities and shall include in such report the rec-~~
13 ~~ommendations of the Director of National Intelligence with~~
14 ~~respect to whether any changes should be made in those~~
15 ~~relationships and whether any intelligence or intelligence-~~
16 ~~related activity not specifically defined as a national intelli-~~
17 ~~gence activity by this title should be determined by the~~
18 ~~President, pursuant to subsection (a) of this section, to be a~~
19 ~~national intelligence activity.~~

20 DIRECTOR AND DEPUTY DIRECTOR

21 SEC. 113. (a) There is established in the executive
22 branch of the Government an ^{independent establishment} office to be known as the
23 "Office of the Director of National Intelligence" (hereinafter
24 in this title referred to as the "Office of the Director"). There
25 shall be at the head of the Office of the Director a Director

1 of National Intelligence (hereinafter in this title referred to
2 as the "Director"). There shall be a Deputy Director of
3 National Intelligence (hereinafter in this title referred to as
4 the "Deputy Director") to assist the Director in carrying
5 out the Director's functions under this Act.

6 (b) The Director and the Deputy Director shall be
7 appointed by the President, by and with the advice and
8 consent of the Senate. The Director and the Deputy Director
9 shall each serve at the pleasure of the President. No person
10 may serve as Director or Deputy Director for a period of
11 more than six years unless such person is reappointed to that
12 same office by the President, by and with the advice and
13 consent of the Senate. No person who has served as Director
14 or Deputy Director for a period of less than six years and
15 is subsequently appointed or reappointed to that same office
16 may serve in that office under such appointment or re-
17 appointment for a term of more than six years. In no event
18 may any person serve in either or both offices for more than
19 a total of twelve years.

20 (c) At no time shall the two offices of Director and
21 Deputy Director be occupied simultaneously by commis-
22 sioned officers of the Armed Forces whether in an active or
23 retired status.

~~for the respective offices in which they serve. In computing the twelve year limitation prescribed in subsection (b) of this section, any service by a person as Director or Deputy Director of Central Intelligence as those offices existed before the effective date of this title shall not be included.~~

DUTIES AND AUTHORITIES OF THE DIRECTOR

SEC. 114. (a) The Director shall serve, under the direction ~~and control~~ of the National Security Council, as the principal foreign intelligence officer of the United States.

(b) The Director shall be responsible for—

(1) the coordination of the national intelligence activities of the United States;

(2) the coordination of United States counter-intelligence activities abroad; and

(3) the coordination of United States counter-terrorism activities conducted abroad by the entities of

the intelligence community *and the coordination of those activities with similar activities abroad by other departments and agencies.*

(c) The Director shall, on a continuing basis, review

all ongoing and proposed national intelligence activities of the United States in order to insure that those activities are properly, efficiently, and effectively directed, regulated, coordinated and administered; that those activities provide, in the most efficient manner, the executive and legislative

branches with the information and analysis that those

branches need to fulfill their responsibilities under the Con-

stitution and laws of the United States; that those activities do not abridge any right guaranteed or protected by the Constitution or laws of the United States; that those activities fully support the national defense or foreign relations of the United States; and that those activities are conducted in conformity with the provisions of this Act and the Constitution and laws of the United States. To achieve these ends the Director shall provide such guidance to the head of each entity of the intelligence community as the Director deems appropriate.

(d) ~~Subject to the provisions of section 117, The Director shall act as the Director of the Central Intelligence Agency, and of such staff as may be required to discharge the Director's responsibilities under this Act.~~

(e) The Director shall coordinate and direct the collection of national intelligence by the entities of the intelligence community by—

(1) developing such plans, objectives and requirements for the entities of the intelligence community as are necessary to meet the intelligence needs and priorities established by the National Security Council;

(2) establishing procedures, in coordination with the heads of departments and agencies not within the intelligence community, to increase, insofar as is possible, the national intelligence contribution made by those

1 departments and agencies without adversely affecting
2 the performance of their other authorized duties;

3 (3) coordinating all clandestine collection of in-
4 telligence outside the United States including all clan-
5 destine collection of intelligence outside the United States
6 utilizing human sources.

7 (f) The Director shall be responsible for the production *and dissemination*
8 of national intelligence, including national intelligence esti-
9 mates and other intelligence community-coordinated analy-
10 ses, and shall—

11 (1) provide, under appropriate security procedures,
12 the executive and legislative branches with accurate,
13 relevant, and timely national intelligence needed by such
14 branches to fulfill their responsibilities under the Con-
15 stitution and laws of the United States; *and*

16 ~~(2) insure that in the production of national intel-~~
17 ~~ligence any diverse points of view are presented fully~~
18 ~~and considered carefully, and that differences of judg-~~
19 ~~ment within the Intelligence Community are clearly~~
20 ~~expressed for policymakers; and~~

21 *have authority to levy analytic tasks on*
22 *(2) obtain, in consultation with the head of any*
23 *departmental intelligence production organizations,*
24 *entity of the intelligence community, such analytic as-*
25 *istance from that entity as is necessary for the Director*

24 ~~to fulfill the Director's responsibilities under this sub-~~
25 ~~section;~~
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(g) The Director shall be responsible for the dissemination, under appropriate security procedures, of national intelligence, and shall ~~establish procedures to ensure~~ —

(1) ~~insure~~ that departments and agencies ~~and appropriate~~ operational commanders of the Armed Forces of the United States are furnished such national intelligence as is relevant to their respective duties and responsibilities; ~~and that the usefulness of~~

~~(2) establish procedures to increase the usefulness for departments and agencies~~ (including departments and agencies not within the intelligence community) ~~of~~ information collected, processed, and analyzed through ~~national intelligence activities; and~~ ^(is increased;)

(2) insure access of each entity of the intelligence community to national intelligence relevant to that entity's authorized ~~national intelligence, counterintelligence, or counterterrorism responsibilities~~ ^{activities} which has been collected or produced by any other entity of the intelligence community.

~~(h) The Director shall be responsible for evaluating the quality of the national intelligence that is collected, produced and disseminated by entities of the intelligence community and shall report on an annual basis to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate on~~

1 ~~the results of such evaluations and on the Director's efforts~~
2 ~~to improve the quality of national intelligence.~~

3 (i) The Director shall insure the appropriate imple-
4 mentation of special activities and sensitive clandestine col-
5 lection projects.

6 (j) The Director, in consultation with the Secretary of
7 State shall—

8 (1) formulate policies with respect to intelligence
9 arrangements with foreign governments; and

10 (2) coordinate intelligence relationships between
11 the various entities of the intelligence community and
12 the foreign intelligence or internal security services of
13 foreign governments; and

14 ~~(2) advise the Permanent Select Committee on In-~~
15 ~~telligence of the House of Representatives and the Select~~
16 ~~Committee on Intelligence of the Senate of any proposed~~
17 ~~agreement governing the relationship between any en-~~
18 ~~tity of the intelligence community and any foreign intel-~~
19 ~~ligence or internal security service of a foreign govern-~~
20 ~~ment before such agreement takes effect.~~

21 (k) The Director shall ~~assign to a single entity of the~~
22 ~~maintenance of services of common concern by designated~~
23 ~~intelligence community, after consultation with the head of~~
24 ~~foreign intelligence organizations on behalf of the~~
25 ~~that entity, responsibility for any service which is of common~~
~~intelligence community.~~
~~concern to more than one entity but which can be more eff-~~

1 employee of the Office of the Director or the security clear-
2 ance of any contractor of any entity of the intelligence com-
3 munity whenever the Director considers such termination
4 necessary or advisable in the interests of the national security
5 of the United States. ~~The Director shall periodically report~~
6 ~~to the Permanent Select Committee on Intelligence of the~~
7 ~~House of Representatives and the Select Committee on In-~~
8 ~~telligence of the Senate on the exercise of the Director's~~
9 ~~authority under this paragraph.~~

10 (o) Any officer or employee of the Office of the Director,
11 ~~including those~~
12 ~~who has been~~ separated under subsection (m) or whose
13 employment has been terminated under subsection (n), may
14 seek or accept employment elsewhere in the Government if
15 declared eligible for such employment by the United States
16 Civil Service Commission. The Civil Service Commission
17 may place such officer or employee in a position in the com-
18 petitive civil service in the same manner as an employee
19 who is transferred between two positions in the competitive
20 service, ~~but only if that officer or employee has served with~~
21 ~~the Office of the Director for at least one year continuously~~
22 ~~immediately preceding separation or termination.~~

23 (p) In order to carry out the Director's duties under
24 this title, the Director is authorized to conduct program and
25 performance audits and evaluations of the national intelligence activities
of the entities of the
intelligence community and to obtain from 00142R000300020003-7

1 or agency such information as the Director deems necessary
 2 to perform such duties; and each department and agency
 3 shall furnish, upon request and in accordance with applicable
 4 law, such information to the Director. ~~The Director shall~~
 5 ~~take appropriate steps to maintain the confidentiality of any~~
 6 ~~confidential information which is provided by any depart-~~
 7 ~~ment or agency.~~

8 (q) In order to carry out the Director's duties under
 9 ^{is authorized to} this title, the Director ~~shall~~ review all research and develop-
 10 ment activities which support the intelligence or intelligence-
 11 related activities of the Government and ~~may review~~ all
 12 the intelligence and intelligence-related activities of the
 13 Government.

14 ~~(r) Nothing in this section shall be construed to prohibit~~
 15 ~~any entity of the intelligence community, if otherwise au-~~
 16 ~~thorized to do so, from producing and disseminating its own~~
 17 ~~analyses of national intelligence information collected by any~~
 18 ~~entity of the intelligence community, but any such analyses~~
 19 ~~shall be promptly provided to the Director.~~

20 DEPARTMENTAL RESPONSIBILITY FOR REPORTING

21 NATIONAL INTELLIGENCE

22 SEC. 115. It shall be the responsibility of the heads of
 23 departments and agencies to insure that all national intelli-
 24 gence obtained by such departments and agencies is promptly

~~(b) For the purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such sixty-day period.~~

PART C—BUDGET AUTHORITY; LIMITATION ON APPROPRIATIONS; COMPTROLLER GENERAL AUDITS
NATIONAL INTELLIGENCE PROGRAM AND BUDGET
AUTHORITY; INFORMATION

SEC. 121. (a) The Director shall be responsible for the preparation and approval of the national intelligence budget presented to the President through the Office of Management and Budget, and, after approval by the President of such budget, for its presentation to the Congress. In carrying out the Director's responsibility under this section, the Director shall—

(1) provide guidance and assistance to the heads of the ~~various~~ entities of the intelligence community in the preparation of the programs and budgets of such entities which relate to national intelligence;

(2) after reviewing and evaluating the annual program and budget proposals submitted to the Director pursuant to subsection (b) of this section, prepare the national intelligence budget;

(3) prepare the national intelligence budget to the

1 President through the Office of Management and Budget;

2 and

3 (4) present and justify to the Congress the Presi-
4 dent's annual budget for national intelligence and, con-
5 currently, submit a report to the appropriate committees
6 of the Congress on the decisions of the President made
7 under the authority of section 112(a) of this title.

8 (b) The head of each entity of the intelligence com-
9 munity included in the national intelligence budget shall develop and submit to the Director and the
10 head of the department or agency in which that entity is
11 located—

12 (1) a proposed program and budget, in such form
13 and at such time as the Director shall prescribe, for that
14 entity based upon program and budget guidance from
15 the Director; and

16 (2) such information as the Director may find
17 necessary to carry out the Director's program and budget
18 responsibilities under this section.

19 (c) The head of each department or agency that
20 includes an entity of the intelligence community shall take
21 such action as may be necessary to insure that internal
22 program and budget decisions of such department or agency
23 have no adverse effect on that department or agency's
24 presidentially approved program or budget relating to the
25 activities of the entity of the intelligence community within
26 that department or agency.

(5) Have full and exclusive authority for reprogramming national intelligence budget funds, in accordance with guidelines established by the Office of Management and Budget, but only after consultation with the head of the department or agency affected and appropriate consultation with the Congress.

1 ~~from audit and review under this subsection an audit and re-~~
2 ~~view initiated by the Comptroller General of the United~~
3 ~~States (not initiated at the request of any committee of the~~
4 ~~Congress), the Director shall submit the notification required~~
5 ~~under this subsection to the select committee named in the~~
6 ~~preceding sentence.~~

7 PART D—PROCEDURES, RESTRICTIONS AND PROHIBITIONS
8 RELATING TO INTELLIGENCE COLLECTION ACTIVITIES
9 AND SPECIAL ACTIVITIES

10 PROCEDURES AND REQUIREMENTS FOR SENSITIVE INTEL-
11 LIGENCE COLLECTION PROJECTS AND SPECIAL ACTIV-
12 ITIES

13 SEC. 131. (a) The National Security Council shall
14 review, *(and advise and assist the President concerning,*
~~in accordance with this section,~~ each proposed
15 special activity, ~~and such clandestine collection activities as~~
16 ~~specified by~~ *counterintelligence and counterterrorism*
~~the President, specifies, conducted by any entity of the~~
17 ~~activities, and communications security activities,~~
~~intelligence community or by any organization or individual~~
18 ~~of the United States.~~
~~for or on behalf of the United States. No decision or recom-~~
19 ~~mendation to the President with respect to any such activ-~~
20 ~~ity may be made for the purposes of this section unless the~~
21 ~~activity has been considered by the National Security Coun-~~
22 ~~cil or a subcommittee thereof at a formal meeting at which~~
23 ~~the following officers or, in unusual circumstances when such~~
24 ~~officers were unavailable, their designated representatives~~
25 ~~were present: the Secretary of State, the Secretary of De-~~

1 functions under this title. No person who serves on the staff
2 of the Oversight Board shall have any contractual or employ-
3 ment relationship with any entity of the intelligence com-
4 munity.

5 (c) The Oversight Board shall, upon request, be given
6 access to all information and materials relevant to the Over-
7 sight Board's functions under this title which are in the pos-
8 session, custody, or control of any entity of the intelligence
9 community.

10 (d) It shall be the function of the Oversight Board to—

11 (1) promptly forward to the Attorney General any
12 report received concerning any intelligence activity in
13 which a question of legality has been raised or which the
14 Oversight Board believes raises a question of legality;

15 (2) report in a timely manner to the President, and,
16 as appropriate, to the Attorney General and the Director,
17 any intelligence activity of any entity of the intelligence
18 community which the Board believes raises a serious
19 question of legality;

20 (3) report in a timely manner to the President, and,
21 as appropriate, to the Director, any intelligence activity
22 the Board believes raises a serious question of propriety;

23 (4) conduct such inquiries into the intelligence
24 activities of any entity of the intelligence community

1 as the Oversight Board deems necessary to carry out the
2 Oversight Board's functions under this title;

3 (5) review periodically the practices and proce-
4 dures of the inspectors general and general counsels of
5 the intelligence community designed to discover and
6 report intelligence activities that raise questions of
7 legality or propriety;

8 (6) review periodically with each entity of the
9 intelligence community that entity's internal ~~rules,~~ ^{guidelines}
10 ~~regulations, procedures, and directives~~ concerning the
11 legality or propriety of intelligence activities in order to
12 ensure the adequacy of such ~~rules, regulations, proce-~~ ^{guidelines}
13 ~~dures, and directives~~; and

14 (7) report periodically to the President, and as
15 the Oversight Board deems appropriate, to the Director,
16 the Attorney General, heads of the entities of the in-
17 telligence community, and the inspectors general and the
18 general counsels of the entities of the intelligence com-
19 munity on the Oversight Board's findings.

20 (e) The inspector general and general counsel of each
21 entity of the intelligence community shall—

22 (1) report, in a timely manner and at least quar-
23 terly, to the Oversight Board and the head of such en-
24 tity any intelligence activity that such inspector general
25 or general counsel believes raises any question of legality

1 ~~or possessing any evidence of any possible violation of Fed-~~
2 ~~eral law by any officer or employee of any entity of the in-~~
3 ~~telligence community, shall provide such information or~~
4 ~~evidence to the inspector general, general counsel, or head~~
5 ~~of such entity. If such information or evidence is not initially~~
6 ~~provided to the general counsel of the entity concerned, the~~
7 ~~general counsel shall be notified by the head of such entity or~~
8 ~~by the inspector general of such entity.~~

9 (2) ~~The Director shall regularly, but not less often than~~
10 ~~once each year, notify officers and employees of the intel-~~
11 ~~ligence community of (A) their duty to provide any informa-~~
12 ~~tion or evidence described in paragraph (1); (B) the officer~~
13 ~~or officers to whom such information or evidence should be~~
14 ~~provided; and (C) the necessity for fully cooperating with~~
15 ~~the Oversight Board and the Attorney General.~~

16 (3) (A) Nothing in this section shall prohibit any em-
17 ployee of an entity of the intelligence community from report-
18 ing any information or evidence described in this paragraph
19 directly to the Director, the Attorney General, the Oversight
20 Board, or to the Permanent Select Committee on Intelligence
21 of the House of Representatives or the Select Committee on
22 Intelligence of the Senate.

23 (B) The Attorney General shall take all steps neces-
24 sary to insure that no employee who, in good faith, com-
25 municates information or evidence in such a fashion, or who

1 communicates such information or evidence to a superior
2 shall be subject, on account of the reporting of such informa-
3 tion or evidence, to discipline through dismissal, demotion,
4 transfer, suspension, reassignment, reprimand, admonish-
5 ment, reduction-in-force, or other adverse personnel action,
6 or the threat thereof.

7 ~~(k) The head of each entity of the intelligence commu-~~
8 ~~nity shall, with respect to that entity, transmit annually to~~
9 ~~the Permanent Select Committee on Intelligence of the~~
10 ~~House of Representatives and the Select Committee on In-~~
11 ~~telligence of the Senate a written report in which the head~~
12 ~~of the entity shall identify and describe any intelligence~~
13 ~~activity of the entity during the preceding year which the~~
14 ~~head of the entity believes constituted a violation of any~~
15 ~~right guaranteed or protected by the Constitution or laws of~~
16 ~~the United States or which the head of the entity believes~~
17 ~~constituted a violation of United States law, Executive order,~~
18 ~~Presidential directive, or Presidential memorandum, and de-~~
19 ~~scribing corrective actions that have been taken or are being~~
20 ~~planned.~~

OVERSIGHT AND ACCOUNTABILITY

To the extent not inconsistent

22 SEC. 152. (a) Consistent with all applicable authorities
23 and duties, including those conferred by the Constitution
24 upon the executive and legislative branches, the heads of

each entity of the intelligence community, with respect to the intelligence activities of that entity shall--

(1) keep the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate fully and currently informed ^{concerning} of ~~all the national~~ intelligence activities, ~~and all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any entity of the intelligence community, including any significant anticipated intelligence activity;~~ ^(, which are the responsibility of, or are engaged in by, such entity) but the foregoing provision shall not constitute ^{implementation} a condition precedent to the ~~initiation~~ of any such ~~anticipated~~ intelligence activity; and

(2) ^{provide} ~~furnish~~ any information or ^{document} ~~material~~ in the possession, custody, or control of the ~~Director or the relevant entity of the intelligence community or in the possession, custody, or control of~~ ^{or} any person paid by the ~~Director or by any such entity,~~ ^{within the jurisdiction of} ~~whenever requested~~ by the Permanent Select Committee on Intelligence of the House of Representatives or the Select Committee on Intelligence of the Senate, ^{upon the request of such Committee;} and

(b) ~~The head of each entity of the intelligence community shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, at least annually,~~

(3) Report in a timely fashion to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate information relating to intelligence activities that

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